No. 09-604

Supreme Court, U.S.
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In the Supreme Court of the United States

VINCE VINHTUONG NGUYEN, *Petitioner*,

v.

CALIFORNIA, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

SUPPLEMENTAL BRIEF CITING NEW AUTHORITY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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NEW AUTHORITY SUPPORTING DENIAL OF THE PETITION FOR CERTIORARI

THE FOURTH CIRCUIT COURT OF APPEALS HAS JOINED THE MAJORITY VIEW REJECTING *APPRENDI* CHALLENGES TO THE USE OF JUVENILE ADJUDICATIONS AS SENTENCING ENHANCEMENTS

Pursuant to Supreme Court Rule 15(8), respondent files this supplemental brief to bring to the Court's attention a recent case supporting its arguments against granting the Petition for Writ of Certiorari in this case. On February 3, 2010, after respondent's opposition brief was completed and in the printing phase, the United States Court of Appeals for the Fourth Circuit held that prior juryless juvenile adjudications can be used to enhance an adult sentence under the Armed Career Criminal Act 18 U.S.C. § 924(e) ("ACCA").

In *United States* v. *Wright*, __ F.3d __ (210 U.S. App. LEXIS 2307, 2010 WL 376549) (4th. Cir. 2010), the defendant was convicted of being a felon in possession of a firearm (18 U.S.C. § 922(g)). *Wright*, 210 U.S. App. LEXIS 2307 at *2, 2010 WL 376549 at *1. Based on his three prior juvenile adjudications for burglaries, the district court sentenced him under the ACCA to life imprisonment. *Wright*, 210 U.S. App. LEXIS 2307 at *6, 2010 WL 376549 at *2. The Fourth Circuit rejected the defendant's claim that the use of his juvenile adjudications to impose a life sentence violated *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), because he was not entitled to a jury trial on the juvenile adjudications in South Carolina Family Court. *Wright*, 210 U.S. App. LEXIS 2307 at *7-*14, 2010 WL 376549 at *3-*5.[1]

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[1] South Carolina does not have separate juvenile courts, (continued...)

Wright supports respondent's argument that no significant conflict of decisions exists in the lower courts on the use of prior juryless juvenile adjudications to enhance an adult sentence. Like *Wright*, the overwhelming majority of lower courts have found no *Apprendi* violation in such use of juryless juvenile adjudications. See Cert. Oppo. at 18-24.

Wright also supports respondent's argument that should this Court want to address the issue of the use of juryless juvenile adjudications as sentence enhancements, there are opportunities to do so in a case that does not present the unique procedural protections that exist in a California Three Strikes law case. California provides an adult a statutory jury-trial right on the truth of a prior-conviction allegation before it can be used as a strike, including an allegation that the defendant has suffered a prior juvenile adjudication. This significantly distinguishes California law from the ACCA interpreted in *Wright* and other federal circuit court cases, and the laws addressed by other state supreme courts. See Cert. Opp. at 5-9, 23-24. Thus, the recent decision in *Wright* supports respondent's argument that the question presented can be decided more naturally and cleanly in a case from a jurisdiction not affording such a statutory jury-trial right to criminal defendants. See Cert. Opp. at 24.

(...continued)
but instead gives its family courts jurisdiction to adjudicate most juvenile offenses. Wright, 210 U.S. App. LEXIS 2307 at *6-*7, n.1; 2010 WL 376549 at *2, n.1.

CONCLUSION

The petition for writ of certiorari should be denied.

Dated: February 10, 2010

Respectfully submitted

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